

Calendar No. 34

109TH CONGRESS
1ST SESSION**S. 539**

To amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2005

Mr. MARTINEZ (for himself, Mr. COBURN, Mr. INHOFE, Mr. SANTORUM, and Mr. BROWNBACK) introduced the following bill; which was read the first time

MARCH 8, 2005

Read the second time and placed on the calendar

A BILL

To amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Incapacitated Persons
5 Legal Protection Act of 2005”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Under the 14th amendment to the Constitu-
 4 tion of the United States, “No State . . . shall de-
 5 prive any person of life . . . without due process of
 6 law . . . nor deny to any person within its jurisdic-
 7 tion the equal protection of the laws.”.

8 (2) Section 5 of the 14th amendment empowers
 9 Congress “to enforce, by appropriate legislation, the
 10 provisions” of the amendment. The United States
 11 Supreme Court has held that under this section,
 12 while Congress may not work a “substantive change
 13 in the governing law” under the other sections of the
 14 14th amendment, it may adopt remedial measures
 15 exhibiting “a congruence and proportionality be-
 16 tween the injury to be prevented or remedied and
 17 the means adopted to that end.”. *Tennessee v. Lane*,
 18 541 U.S. 509, 124 S. Ct. 1978, 1986 (2004)
 19 quoting *City of Boerne v. Flores*, 521 U.S. 507, 520
 20 (1997).

21 (b) PURPOSES.—It is the purpose of this Act—

22 (1) to facilitate balancing the acknowledged
 23 right of persons to refuse consent to medical treat-
 24 ment and unwanted bodily intrusions with the right
 25 to consent to treatment, food, and fluids so as to
 26 preserve their lives; and

1 (2) in circumstances in which there is a con-
 2 tested judicial proceeding because of a dispute about
 3 the expressed previous wishes or best interests of a
 4 person presently incapable of making known a choice
 5 concerning treatment, food, and fluids the denial of
 6 which will result in death, to provide that the funda-
 7 mental due process and equal protection rights of in-
 8 capacitated persons are protected by ensuring the
 9 availability of collateral review through habeas cor-
 10 pus proceedings.

11 **SEC. 3. EXTENSION OF HABEAS PROTECTIONS.**

12 (a) IN GENERAL.—Chapter 153 of title 28, United
 13 States Code, is amended by striking section 2256 and in-
 14 serting the following:

15 **“§ 2256. Extension of habeas protections to certain**
 16 **persons subject to court orders**

17 “(a) For the purposes of this chapter, an incapaci-
 18 tated person shall be deemed to be in custody under sen-
 19 tence of a court established by Congress, or deemed to
 20 be in custody pursuant to the judgment of a State court,
 21 as the case may be, when an order of such a court author-
 22 izes or directs the withholding or withdrawal of food,
 23 fluids, or medical treatment necessary to sustain the per-
 24 son’s life. In a habeas corpus proceeding under this section
 25 the person having custody shall be deemed to encompass

1 those parties authorized or directed by the court order to
 2 withdraw or withhold food, fluids, or medical treatment,
 3 and there shall be no requirement to produce at the hear-
 4 ing the body of the incapacitated person.

5 “(b) Subsection (a) does not apply in the case of a
 6 judicial proceeding in which no party disputes, and the
 7 court finds, that the incapacitated person, while having
 8 capacity, had executed a written advance directive valid
 9 under applicable law that clearly authorized the with-
 10 holding or withdrawal of food or fluids or medical treat-
 11 ment in the applicable circumstances.

12 “(c) As used in this section, the term ‘incapacitated
 13 person’ means an individual who is presently incapable of
 14 making relevant decisions concerning the provision, with-
 15 holding, or withdrawal of food, fluids, or medical treat-
 16 ment under applicable State law.

17 “(d) Nothing in this section shall be construed to cre-
 18 ate substantive rights not otherwise secured by the Con-
 19 stitution and laws of the United States or of the several
 20 States.”.

21 (b) CLERICAL AMENDMENT.—The item relating to
 22 section 2256 in the table of sections at the beginning of
 23 chapter 153 of title 28, United States Code, is amended
 24 to read as follows:

“2256. Extension of habeas protections to certain persons subject to court or-
 ders.”.

1 (c) PROSPECTIVE EFFECT.—The remedies specified
2 by this Act shall be available on behalf of any incapaci-
3 tated person deemed to be in custody by its terms who
4 is alive on or after the date of enactment of this Act.

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A BILL

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